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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner

v.

SALADIN JERU-AHMED
Respondent

Case No.: DH-A-09-800026

FINAL ORDER

I. Introduction

By letter dated June 12, 2009 (the “Determination”), the Department of Health (“DOH” or “Government”) determined that Respondent’s American Bull Dog Terrier “Big Boy” is a “potentially dangerous dog” pursuant to the Animal Protection Amendment Act of 2008 codified at Title 8, Chapter 19 of the District of Columbia Code. *See also* D.C. Act 17-493, 55 D.C. Reg. 9186, 9190-95 (August 29, 2008) (amendments pertaining to dangerous dogs). Respondent filed a hearing request contesting the Determination pursuant to D.C. Official Code § 8-1902(c).

I held a status conference on July 20, 2009, followed by an evidentiary hearing on July 23, 2009. Assistant Attorney General Rudolph L. Schreiber represented the Government at the hearing. DOH Program Specialist Molly Lunaris testified for the Government, as did Animal Control Officer Ted Deppner and Humane Society Control Officer Eve Russell. Respondent Saladin Jeru-Ahmed appeared *pro se* and testified for himself, along with Doris Plowden, who testified by telephone. I admitted into evidence Exhibits 100 through 111, and 113. Based on the testimony, the evidentiary exhibits and the entire record in this case, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. Respondent lives in a single family house at 1252 Jackson Street, NE (the “Property”) along with his American Bull Dog Terrier “Big Boy.”
2. Respondent’s back yard is not enclosed. A tall cinderblock and chain-link fence runs along one neighboring property line, but only a partial cinderblock fence stands between Respondent’s Property and his other neighbor’s back yard. The fence is only 1 to 2 feet high in places (Exhibits 108 and 109) and is completely dismantled (*i.e.*, nonexistent) near the back of the yard away from the house. Exhibit 110 (photo, middle-right area).
3. Big Boy is a two-year-old unaltered male 65-pound American Bulldog Terrier with a large head. *See* Exhibit 100 (DOH Intake Report, “Animal Details”); Exhibit 113 (photo of Big Boy through basement window). He can easily cross into the neighbor’s back yard by going over or around the cinderblock fence. *See, e.g.*, Exhibit 111 (photo of Big Boy with head above fence).
4. On May 20, 2009, Respondent’s neighbor was watering his back yard when Big Boy charged across the property line toward him and chased him into the house. *See, e.g.*, Exhibit 106 (written statement from neighbor). The neighbor reported the incident to DOH, advising that Big Boy “often comes on my property” and that he (the neighbor) is “fearful for my safety and the safety of any family members and friends that visit me.” *Id.*¹

¹ The neighbor reported another incident where Big Boy allegedly charged and chased him in his front yard on May 10, 2009. *See* Exhibit 106. I express no view about whether the incident occurred as reported because the record contains no details or corroborating evidence about events on or about May 10, 2009, and as discussed in Note 6, *infra*, an eyewitness contradicted the neighbor’s hearsay account of the May 10th incident.

5. On May 21, 2009, Animal Control Officer Ted Deppner followed up on the incident and found Big Boy loose and unsupervised at the Property running up to a gate barking at passers-by. Big Boy was on the Property at the time, but nothing prevented him from leaving by jumping or going around the incomplete cinderblock fence. Officer Deppner considered Big Boy's behavior to be "very aggressive." Exhibit 104 (DOH Violation Notice).
6. Also on May 21, 2009, Humane Society Enforcement Officer Eve Russell visited the Property and found Big Boy loose in the back yard barking at her and passers-by. Big Boy was on the Property, but nothing prevented him from leaving by jumping or going around the incomplete cinderblock fence. Officer Russell considered Big Boy's behavior to be "aggressive" and "menacing." She photographed him, but only from a distance using a zoom lens because she was intimidated.²
7. Big Boy's aggressive behavior and the unsecured back yard prompted DOH to capture and impound him on May 21, 2009. *See* Exhibits 100 and 104. After the impoundment, Respondent confronted Laura Oliver, the Director of Field Services for the D.C. Animal Care and Control Agency, and insisted that if his neighbor "hadn't run, the dog wouldn't have chased him. *See* Exhibit 107 (email from Laura Oliver to Molly Lunar).³

² I credit Officer Russell's characterization of Big Boy as "aggressive" and "menacing," in part, because she owns a bull terrier and testified credibly that she is not generally fearful of large dogs.

³ Ms. Oliver's e-mail about Respondent's statement came into evidence as admissible hearsay authenticated by Ms. Lunar. *See* OAH Rule 2820.1. Respondent did not deny making the statement, which is an admission against interest that tends to confirm Big Boy indeed chased the neighbor into his house. The court rejects the implication that the neighbor is somehow responsible for being chased because he ran away from Big Boy.

III. Conclusions of Law

A. Controlling Law

Under the Animal Protection Amendment Act of 2008 (the “Act”), a dog is “potentially dangerous” if it falls into any one of the following three definitional categories:

- (4) (A) ‘Potentially dangerous dog’ means any dog that:
- (i) Without provocation, chases or menaces a person or domestic animal in an aggressive manner, causing an injury to a person or domestic animal that is less severe than a serious injury;
 - (ii) In a menacing manner, approaches without provocation any person or domestic animal as if to attack, or has demonstrated a propensity to attack without provocation or otherwise to endanger the safety of human beings or domestic animals; or
 - (iii) Is running at-large and has been impounded by an animal control agency 3 or more times in the District within any 12-month period.

D.C. Official Code § 8-1901(4)(A). Where, as here, the record contains no evidence of physical injuries, threats to domestic animals, or multiple impoundments, a dog may still be potentially dangerous if it “in a menacing manner, approaches without provocation any person ... as if to attack” D.C. Official Code § 8-1901(4)(A)(ii). One instance of such behavior is sufficient to render a dog “potentially dangerous” as a matter of law. A dog need not be generally vicious or have a history of biting.

B. Analysis of the Evidence

The Government proved by a preponderance of the evidence that on May 20, 2009, Big Boy charged Respondent’s neighbor while he was watering his back lawn and chased him into his house. The core facts emerged from the neighbor’s description of the incident to DOH Program Specialist Lunaris, who relayed the information at trial through hearsay testimony derived from her communications with him, including his email statement entered into evidence

as Exhibit 106. Hearsay is admissible pursuant to OAH Rule 2820.1, but it generally carries less probative value than conflicting eyewitness testimony, especially where the hearsay declarant (in this case, the neighbor) is available to testify, but does not appear. *See Compton v. D.C. Board of Psychology*, 858 A.2d 470, 479 (D.C. 2004). Contradicted or not, however, the credibility and probative value of hearsay are matters left to the sound discretion of administrative law judges based on the evidence unique to each case:

The relaxed rules on the admissibility and competence of hearsay evidence in administrative proceedings reflect the ALJ's ability to assess properly the reliability and probative weight of hearsay evidence - an expertise less likely to be found in the average jury, toward which the traditionally rigorous rules of evidence are aimed.

* * * *

The weight to be accorded to hearsay evidence ‘ranges from minimal to substantial based on a case-by-case evaluation of the reliability and the probative value of the evidence.’

Compton, 858 A.2d at 476 n. 9 (citing *Jadallah v. D.C. Dep't of Employment Servs.*, 476 A.2d 671, 676 (D.C. 1984)). *Id.* at 476 (quoting *Jadallah*, 476 A.2d at 678 (Ferren, J., concurring)).⁴

On this record, the neighbor’s hearsay account of the May 20th incident is uncontradicted and the eyewitness testimony about Big Boy’s demeanor and lack of confinement during the same timeframe tends to corroborate the neighbor’s version of events. Respondent put on evidence that Big Boy is generally well-behaved,⁵ but neither he nor any other witness

⁴ The circumstances under which hearsay rises to the level of substantiality are not ascertained by any definitive rule of law, but rather by a set of considerations applied to the particular facts of each case. *See Robinson v. Smith*, 683 A.2d 481, 488-89 (D.C. 1996) (citing *Washington Times v. District of Columbia Dep't of Employment Servs.*, 530 A.2d 1186, 1190 (D.C. 1997) (stating that even hearsay “that lacks indicia of reliability may be entitled to some weight”)).

⁵ Respondent testified that Big Boy is a “family dog” that plays with his young children and has no history of biting. He also testified that he trained Big Boy to stay in his yard. I credit him on both points. As a matter of law, however, the case does not turn on how Big Boy behaves most of the time, but on whether his specific behavior toward the neighbor fits the statutory definition of “potentially dangerous dog.” It bears emphasis that a single act of unprovoked aggression can bring a dog within the ambit of the applicable definition, regardless of whether the dog bites somebody. D.C. Official Code § 8-1901(4)(A)(ii).

contradicted the neighbor's account of Big Boy charging him in his own back yard and chasing him into his house.⁶ The neighbor's uncontradicted version of events is consistent with the Animal Control and Humane Society Officers' eyewitness testimony about Big Boy's size, demeanor, and easy access to the neighbor's property. Officers Deppner and Russell both observed Big Boy immediately after the incident and attested to his powerful build, barking, and aggressive behavior. They also clearly established through testimony and photographs that Big Boy can easily enter the neighbor's back yard by going over or around the back fence.

In sum, the neighbor's uncontradicted hearsay account of Big Boy charging and chasing him is consistent with the direct evidence about Big Boy's aggressive behavior and easy access to the neighbor's yard. The record considered as a whole also establishes by inference that the neighbor did not provoke Big Boy. In that regard, it bears emphasis that the neighbor was working in *his* yard, Big Boy came onto *his* property, and he ran *in the opposite direction* of the approaching dog.⁷ Keeping in mind that all animals are inherently unpredictable,⁸ anyone in the neighbor's position would have reasonable grounds to fear for their safety and run away if Big Boy crossed the property line and ran towards them.

⁶ Respondent's witness Doris Plowden testified that Big Boy did not in fact charge the neighbor in his front yard as he reported on May 10, 2009. But she did not see what happened in the neighbor's back yard on May 20, 2009.

⁷ The record contains some evidence that Respondent's neighbor once sprayed water on another of Respondent's dogs (a puppy). The incident occurred on an unspecified date other than May 20, 2009, and otherwise bears no connection to the incident involving Big Boy. Nothing in the record suggests the neighbor sprayed or did anything else to Big Boy that could be construed as provocation.

⁸ When dogs run toward or chase people, it is tempting for their owners to deem the behavior playful or friendly—as opposed to menacing. Such characterizations are understandable where, as here, Respondent testified that he loves his dog and considers him part of the family. That said, broad generalizations about a dog's intent to play or attack are inherently speculative and the person being chased (as opposed to the owner) is entitled to the benefit of the doubt on the subject as the person risking injury in the heat of the moment. Under no circumstance should the risk of misapprehending a dog's intent fall on a person approached by an unleashed, unsupervised dog running loose on their property without permission.

C. Conclusions

This proceeding is not an abstract referendum about whether Big Boy is a generally good or bad dog. The case turns solely on whether Big Boy meets the statutory definition of a “potentially dangerous dog.” On this record, the evidence establishes that Big Boy approached respondent’s neighbor in a menacing manner without provocation as if to attack, prompting the neighbor to reasonably fear for his safety and run into his house. Big Boy is therefore a “potentially dangerous dog” pursuant to D.C. Official Code § 8-1901(4)(A)(ii), and Respondent must obtain a special certificate of registration to keep him. The registration requirements break down as follows:

- (a) The Mayor shall issue a certificate of registration to the owner of a potentially dangerous dog if the owner establishes to the satisfaction of the Mayor that:
 - (1) The owner of the potentially dangerous dog is 18 years of age or older;
 - (2) A valid license has been issued for the potentially dangerous dog...
 - (3) The potentially dangerous dog has current vaccinations;
 - (4) The owner has a proper enclosure, as determined by the Mayor, to confine the potentially dangerous dog;
 - (5) The owner has paid an annual fee ... in addition to regular dog licensing fees, to register the potentially dangerous dog;
 - (6) The potentially dangerous dog has been spayed or neutered;
 - (7) The potentially dangerous dog has been implanted with a microchip containing owner identification information; and
 - (8) The owner has written permission of the property owner, if the dog owner is not the property owner, and from a homeowner’s association, if appropriate, to house the dog on the premises where the dog will be kept.

D.C. Official Code § 8-1904(a).

The evidence presented at trial leaves no doubt that the Respondent's short, incomplete back fence is inadequate to confine Big Boy, making Respondent at this juncture ineligible for a certificate of registration.⁹ Under the circumstances, the Act specifies that "It shall be unlawful to ... keep a potentially dangerous dog ... without a valid certificate of registration" D.C. Official Code § 8-1905(1). I shall therefore affirm the DOH Determination that Big Boy is a potentially dangerous dog and, in light of the statutory prohibition against keeping an unregistered potentially dangerous dog, I shall order Respondent to relinquish custody and ownership of Big Boy to DOH immediately.

IV. Order

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is this 30th day of July 2009

ORDERED, that the DOH Determination that Big Boy is a potentially dangerous dog is **AFFIRMED**; and it is further

ORDERED, that Respondent shall relinquish custody and ownership of Big Boy to DOH at the DC Animal Care and Control Facility or a mutually agreed-upon alternative location **IMMEDIATELY**; and it is further

⁹ As a matter of common sense, keeping any dog (especially a large one) outdoors in an unfenced urban or suburban setting invites problems given the close proximity of neighboring homes. The law thus prudently requires dog owners to have proper enclosures constructed to prevent exactly the type of dog/human confrontation that led to this unfortunate case:

'Proper enclosure' means secure confinement indoors or secure confinement outdoors in a locked structure designed and constructed to:

- (A) Deter escape of the dog;
- (B) Protect the dog from the elements; and
- (C) Prevent contact with the dog from humans and other domestic animals.

D.C. Official Code § 8-1901(5).

ORDERED, that DOH may at its sole discretion keep Big Boy in its custody until such time, if any, that Respondent demonstrates compliance with the potentially dangerous dog registration and ownership requirements of D.C. Official Code §§ 8-1904 and 1905 and any other special security requirements the Mayor may establish pursuant to the Act; and it is further

ORDERED, that DOH may at its sole discretion transfer, keep, or dispose of Big Boy in any lawful manner not specifically listed in this Order, including but not limited to rehabilitating and/or placing him for adoption, provided that DOH shall not under any circumstance humanely destroy Big Boy pursuant to D.C. Official Code § 8-1903(c) until after the deadline expires for petitioning the Superior Court of the District of Columbia to review this Final Order; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

/s/

Scott A. Harvey
Administrative Law Judge